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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/935,935	08/23/2001	David Boyd Whitten	13039:90	1414

7590 07/11/2003

Hughes & Luce, L.L.P.
1717 Main Street, Suite 2800
Dallas, TX 75201

EXAMINER

TRAN, KHOI H

ART UNIT	PAPER NUMBER
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3651

DATE MAILED: 07/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/935,935

Applicant(s)

WHITTEN ET AL.

Examiner

Khoi H Tran

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-29 and 34-44 is/are pending in the application.
- 4a) Of the above claim(s) 16-29, 35 and 37-43 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 44 is/are allowed.
- 6) ☒ Claim(s) 2-5, 7, 8 and 10-15 is/are rejected.
- 7) ☒ Claim(s) 6, 9, 34 and 36 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.

- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

KHOI H. TRAN
PRIMARY EXAMINER

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I, Species III, corresponding to Figure 3, claims 2-15, 34, 36, and 44, in Paper No. 9 is acknowledged.

The traversal for the Groups I and II is on the ground(s) that the office has failed to state a factual basis for concluding that "adjustment of the light source from the emitter(s)" (page 2, starting from line 6). Applicant also vehemently stated, "none of the pending claims includes such a limitation". This argument is not persuasive.

Applicant's attention is directed to claim 11 and the language drafted by Applicant. The claim read as "**wherein the power of one or more light emitting source is adjusted to compensate for reflected light effects**". Applicant's attention is also directed to section 806.05(e) of the MPEP for better understanding of the restriction requirement. Under the Process and Apparatus for Its Practice- Distinctness, "only one-way distinctness is generally needed to support a restriction requirement. In the instant restriction requirement, two examples were given.

The traversal of the Species Requirement is on the ground that the Office Action has failed to identify the claim characteristics and/or limitations relating to the purported species of Figures 2 and 7. This is not found persuasive. Applicant's attention is directed to MPEP 808.01(a) and 809.02(a) (emphasis added) for a more in dept understanding of a Species Requirement. The species had been properly identified in the Restriction requirement in paper No. 6., per MPEP 809.02(a). According to the

MPEP, it is the Applicant's duty to include **"a proper election along with a listing of all claims readable thereon"**.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1-5, 7, 8, 10, 11, 12, and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Hair, III et al. 6,384,402.

Hair '402 discloses a vending system per claimed invention. Hair '042 vending system comprises an ordering system for receiving a customer order and a spiral delivery system for delivering said ordered products upon proper payments. The vending system comprises an infrared optical monitoring system located above a product delivery path for sensing delivered products. The product delivery path is

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located between a product storage position and a product receiving position. Hair's vending system includes a control system and circuitries for ensuring that the spiral delivery system will continue to operate until a product has been detected by the optical monitoring system, or an establish time interval has elapsed. The spiral delivery system will stop upon the detection of a delivered product. Hair's optical monitoring system comprises a plurality of infrared emitters and detectors. The infrared emitters locate across from the detectors. The detectors detect a change in the received light beam intensity to determine the passing of the smallest product through the delivery path. The control system includes a reporting circuitry for reporting, to at least the customer, the vend status. The reporting circuitry further comprises a logic circuit for determining whether to offer another vend attempt to the customer based upon a comparison between the vend result and a predetermined rule (column 15, lines 31-33).

In regards to claims 10 and 11, Hair '402 system automatically adjusting the power of the light source to compensate for ambient and reflected light effects.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hair 6,384,402 in view of Walker et al. 6,324,520.

Hair '402 discloses all elements per claimed invention as indicated in paragraph 3 above. However, Hair' 402 is silent as to the specific of a data storage device for storing information concerning customer order and a display device wherein an operator can retrieve said information.

Walker '520 discloses a method and system for collecting information from a plurality of vending machines for inventorying, marketing, and pricing purposes. Each of the vending machines comprises data storage for storing information concerning customer orders. Said information is retrievable via display device 135 (Figure 1).

It would have been obvious for a person with ordinary skill in the art, at the time the invention was made, to have provided to Hair's system with data storage and display device for storing and retrieving customer order information because it facilitates inventorying, marketing, and price adjusting activities, as taught by Walker '520.

Allowable Subject Matter

6. Claim 44 is allowable over the prior art of record.
7. Claims 6, 9, 34, and 36 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

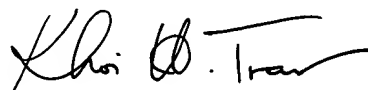
Conclusion

8. Additional references made of record and not relied upon are considered to be of interest to applicant's disclosure: see attached USPTO form 892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoi H Tran whose telephone number is (703) 308-1113. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on (703) 308-1113. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and 7033057687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

A handwritten signature in black ink, appearing to read 'Khoi H. Tran', with a stylized flourish at the end.

Khoi H Tran
Primary Examiner
Art Unit 3651

KHT
July 8, 2003